

## TITLE 4: REVENUE AND FINANCE

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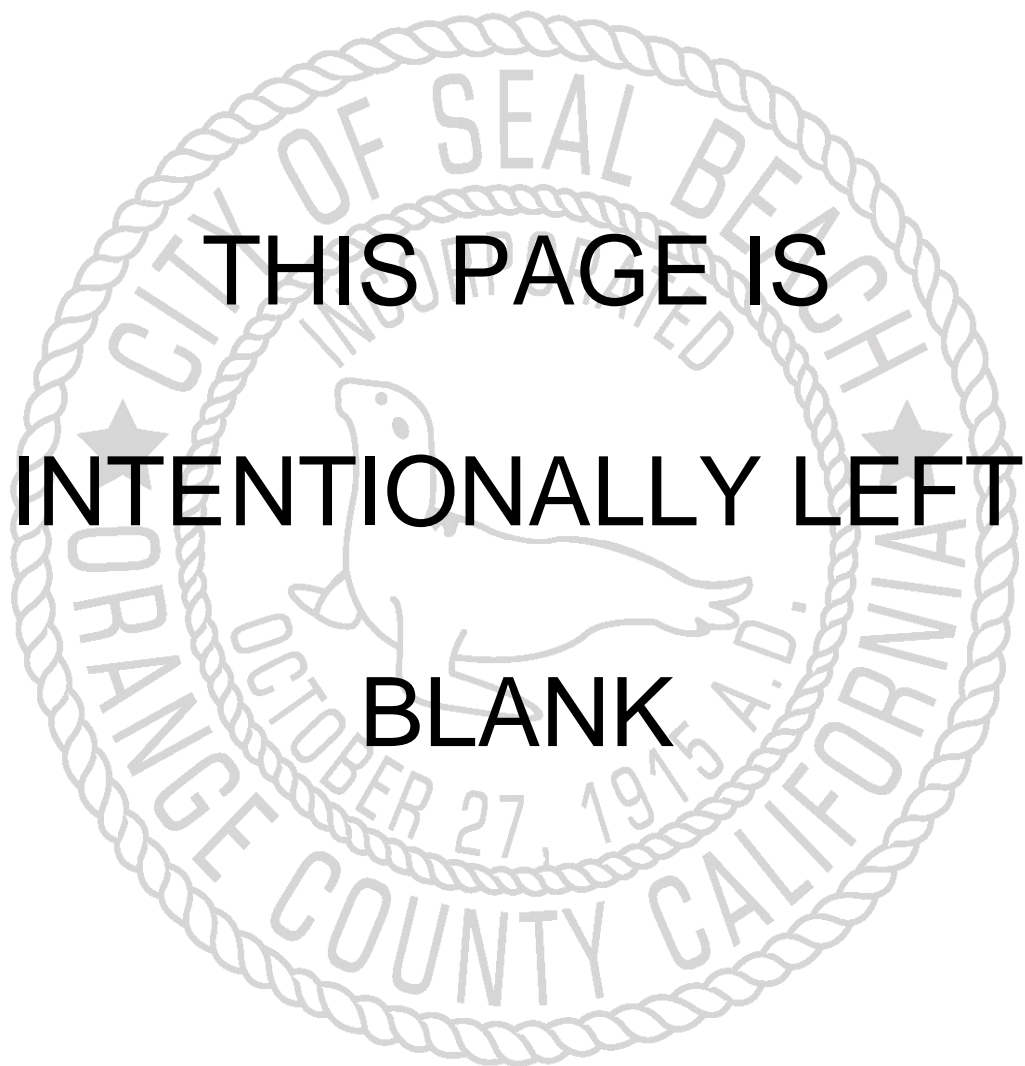
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## **Chapter 4.05 Community Service Fees**

### **§ 4.05.005 Definitions.**

For the purposes of this chapter, the following words and phrases shall mean:

- A. Community Service: tree trimming service, street sweeping service and any other public service provided by the city to the residents and property owners of the city.
- B. Community Service Fee: the charge for a community service.
- C. Dwelling: any building designed or used exclusively for residential purposes.
- D. Dwelling Unit: one or more rooms in a dwelling designed as a unit of occupancy by not more than one family for living and sleeping purposes and having kitchen facilities for the exclusive use of the occupants of such dwelling unit.
- E. Non-residential Property: real property within the city that is not used for residential occupancy. Non-residential property includes without limitation: motels; hotels; restaurants; vacant property; and any other building or structure designed or intended to be used for commercial or industrial purposes.

### **§ 4.05.010 Imposition.**

The city council may, by resolution, impose a community service fee upon each dwelling unit and non-residential property in the city. The amount of such fee shall not exceed the cost of providing the community service for which the fee is imposed.

### **§ 4.05.015 Billing.**

The community service fee for a particular dwelling unit or non-residential property shall be billed on the same bill and to the same person as the water bill for that unit or property. In the event the city does not furnish water service to a dwelling unit or non-residential property, the community service fee for such unit or property shall be billed independently.

### **§ 4.05.020 Delinquency.**

The community service fee shall be due on the 1st day of every month following the reading of the water meter by the city. A community service fee shall be deemed delinquent if it is not paid within 30 days of the due date.

### **§ 4.05.025 Collection.**

- A. Interest. Any amount of a community service fee that is not paid within the allotted period shall bear interest at the then maximum legal rate. Additionally, if the city incurs costs for the collection of such fee, those collection costs (including attorney's fees) may be charged.
- B. Procedure. Community service fees that remain unpaid for a period of 60 days after their due date may be collected from the owner of record of the premises, along with interest and collection costs, in accordance with the procedure set forth below. Nothing in this chapter shall preclude the city from utilizing any other available legal remedy for collecting delinquent fees.

1. Once each year the city council shall cause to be prepared a report of delinquent charges and costs of collection. The city council shall fix a time, date and place for a hearing on the report and any objections thereto.

2. Not less than 10 days before the date set for the hearing on the report, the city clerk shall mail notice of the hearing to each property owner listed in the report.

3. At the hearing, the city council shall receive objections to the report and may modify the report in any manner deemed just. Following the hearing, the city council shall by resolution confirm the report.

4. The delinquent charges and collection costs set forth in the confirmed report shall constitute a special assessment against the respective properties listed in the report and shall be a lien on such properties for the applicable amounts. The city manager shall cause a certified copy of the confirmed report to be filed with the county auditor for the amounts of the respective assessments against the respective properties as they appear on the current assessment roll. The city manager also shall cause a certified copy of the confirmed report to be filed with the county recorder. Upon recordation of the confirmed report, the assessment shall constitute a lien against the parcel. The assessment shall thereafter be collected at the same time and in the same manner as general taxes of the city on real property. The assessments and the annual interest thereon shall be payable and become delinquent at the same times, and shall bear the same proportionate penalties and interest after delinquency, as do the general taxes on real property within the city.

**§ 4.05.030 Disposition.**

All proceeds collected pursuant to this chapter shall be deposited in the general fund of the city and may be expended for any proper municipal purpose.

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## **Chapter 4.10**

### **Transportation Impact Development Fee**

#### **§ 4.10.005 Purpose.**

The city council previously has established a Transportation Facilities and Programs development fee that imposes upon commercial, industrial and residential development projects an equitable share of the cost of mitigating future transportation facility and program needs created by such projects.

#### **§ 4.10.010 Definitions.**

For the purposes of this chapter, the following words and phrases shall mean:

A. Application Fee: the transportation facilities and program development application fee.

B. Building Permit: as defined in the Uniform California Code.

C. Certificate of Occupancy: a permit to occupy and use a building.

D. Developer: an applicant for a building permit for a development project.

E. Development Project: (i) a construction or addition of commercial or industrial floor area that requires a building permit; (ii) a construction of residential dwelling units that requires a building permit; and (iii) a change of property use that requires a building permit and that will generate additional daily trips above the amount that can be reasonably associated with the current use of such property.

F. Public Facilities: publicly owned or operated buildings and structures used for conducting government business. "Public facilities" includes without limitation: city hall; police and fire stations; offices; and equipment yards. "Public facilities" does not include private commercial development projects on leased public land.

G. Transportation Facilities: projects to improve the city's transportation system that require physical alteration of such system. Examples of transportation facilities include without limitation: roadway improvements; signalization improvements; and other ancillary public right-of-way improvements.

H. Transportation Impact Fee: the transportation facilities and programs development fee.

I. Transportation Programs: projects to improve the city's transportation system that do not require physical alteration of such system. Examples of transportation programs include without limitation: ride sharing programs; transit subsidies; alternative work week scheduling; and education/marketing programs designed to reduce automobile trips.

J. Transportation System Facilities and Programs Improvement Plan: a program for improving the city's transportation system in order to mitigate the adverse impacts on such system resulting from a new development project.

K. Trip Generation Rate: the number of peak-trips generated by each type of commercial, industrial or residential development project.

**§ 4.10.015 Establishment of Fees.**

A. Except as otherwise provided in this chapter, developers shall pay a Transportation Impact Fee in an amount established by city council resolution. The transportation impact fee generally shall be calculated as follows:

1. The additional development in the city anticipated to be constructed by January 1, 2000 shall be determined.

2. Using generally accepted trip generation rates, the number of peak-time trips generated by the additional development shall be determined. The trip generation rate for each land use category used in developing the aggregate future trip project shall be set forth in the city council resolution establishing the transportation impact fee amounts.

3. The cost to construct transportation facilities and implement transportation programs to mitigate the additional peak-time trips shall be determined.

4. The cost of new facilities and programs shall be divided by the number of additional peak-time trips to establish a trip cost factor.

5. The trip cost factor shall be multiplied by either the peak-trip generation rates per square foot for commercial and industrial development, or by the peak-trip generation rates per residential dwelling unit, to establish the transportation impact fee for the development project.

B. Except as otherwise provided in this chapter, developers shall pay an application fee in an amount established by city council resolution. Such fee shall be based on the estimated administrative and personnel costs of determining the transportation impact fee amount to be paid by the developer.

C. The city manager shall be responsible for calculating the fees required by this section. This calculation shall be made at the time of application for the building permit for the development project.

D. The city council shall approve a transportation system facilities and programs improvement plan prior to or concurrently with the resolution establishing the amounts of the transportation impact fee. The plan shall describe the nature and extent of these improvements and their associated cost estimates.

**§ 4.10.020 Exemptions.**

The following development projects are exempt from the requirements of this chapter:

- A. Public facilities.
- B. Public elementary schools and secondary schools.
- C. Multiple family residential developments with more than 25% affordable housing dwelling units.
- D. Residential development that will not result in an increase in dwelling units over those existing on the project's site.



E. Development projects for which all discretionary permits have been granted prior to October 25, 1989. This exemption does not override any condition of approval that requires payment of fees for mitigation of adverse traffic impacts.

**§ 4.10.025 Payment.**

A. The application fee shall be paid at the time a building permit application is submitted for a development project that is subject to the transportation impact fee.

B. The transportation impact fee shall be paid as follows:

1. Commercial/Industrial Development Projects. The fee shall be paid at the time of building permit issuance for commercial or industrial development projects. Notwithstanding the preceding, if a commercial or industrial development project will be constructed in phases, and if separate building permits will be issued for each phase, then the fee may be paid separately for each phase in proportion to the percentage of the project's floor area to be constructed pursuant to each building permit. Alternatively, the fee shall be paid in full at the time of the issuance of the first building permit.

2. Residential Development Projects. The fee shall be paid prior to final inspection for the first dwelling unit of the project. For purposes of this provision, "final inspection" has the meaning set forth in Government Code Section 66007. If the fee is not paid prior to issuance of the building permit for the project, then the developer shall execute a contract with the city guaranteeing payment of the fee prior to final inspection. Such contract shall be recorded with the county recorder and shall constitute a lien for the payment of the fee. The lien shall be enforceable against successors in interest to the developer. Such contract also shall require the developer to provide appropriate notification of the opening of any escrow or the sale of the property for which the building permit is issued and to provide escrow instructions that the fee shall be paid from the sale proceeds in escrow prior to disbursement of proceeds to the seller.

**§ 4.10.030 Adjustment.**

The city council may approve adjustments or waiver of the transportation impact fee, or modification of the payment schedule, upon request of affected developers. Any such request shall be made on an application form provided by the city and shall be submitted no later than the time of the building permit application. The city council shall consider the request at a public hearing within 60 days after the filing of a complete application. No adjustment or waiver of the transportation impact fee shall be approved unless the city council finds that there is not a reasonable relationship between the development project's impact on transportation facilities and programs in the city and either the fee amount or the type of transportation facilities or programs to be provided. No modification of the fee schedule shall be approved unless the city council finds that there are special circumstances applicable to the developer or the development project that justify a different schedule.

**§ 4.10.035 Refunds.**

A. Upon application, transportation impact fees collected by the city shall be refunded if either of the following circumstances is shown to have occurred: (i) the fee was erroneously collected; or (ii) the development project's building permit has expired and no extension has been granted.

B. Refund applications for fees collected erroneously shall be filed no later than 90 days after payment of the fee. Refund applications for fees pertaining to abandoned projects shall be filed no later than 90 days after the expiration of the building permit.

**§ 4.10.040 Credits.**

A person shall be entitled to a reduction in the amount of the fees required by this chapter in an amount determined by the city manager if that person constructs transportation facilities that are included in the transportation system facilities and programs improvement plan applicable to the development project constructed by such person.

**§ 4.10.045 Reserve Account.**

Pursuant to Government Code Section 66006, there is a separate reserve account in the city's general fund entitled the "Transportation Facilities and Programs Improvement Fund." The fees paid pursuant to this chapter shall be placed into such reserve account and used solely for the purpose of providing transportation facilities and programs within the city. All monies in the reserve account shall be held separate from other city funds, and all interest or other earnings of the reserve account shall be credited to that account.

**§ 4.10.050 Reserve Account Expenditures.**

All monies and interest in the transportation facilities and programs improvement fund shall be expended on transportation facilities and programs approved by the city council. Such expenditures may include without limitation the following:

A. Reimbursement of costs incurred by the city for development of transportation facilities and programs. Reimbursable costs include without limitation expenses related to the following: land acquisition; planning; legal advice; engineering; design; construction; and equipment.

B. Reimbursement of costs incurred by the city in connection with the administration of the reserve account.

C. Issuance of bonds or notes, secured by the reserve account, for the provision of transportation facilities and programs.

D. Land acquisition, planning, design and construction (including rehabilitation) that result in the provision of transportation facilities and programs.

**§ 4.10.055 Review of Fee Formula.**

Prior to July 1, during the budget review process, the city council shall review the degree to which fees collected pursuant to this chapter are mitigating the impacts caused by new development projects on transportation facilities and programs. Five years after the effective date of this chapter, the city council shall consider a report by the director of development services reviewing the transportation impact fee formula in order to determine whether any adjustments are warranted.

**§ 4.10.060 Additional Transportation Facilities and Programs.**

This chapter shall not limit the city's police power authority to require, as a condition of development, additional transportation facilities and transportation programs by persons using real property within the city.

## **Chapter 4.15 Special Funds**

### **§ 4.15.005 Special Gas Tax Street Improvement Fund.**

The city council has previously created a Special Gas Tax Street Improvement Fund. Such fund shall receive as revenues those amounts received by the city pursuant to Streets and Highways Code Sections 180 through 207 for the acquisition of real property or interests therein for the construction, maintenance, or improvement of streets or highways other than state highways. Disbursements from such fund shall be used only for the purposes authorized by and in accordance with state law. Until expended, all monies in the fund shall be invested to earn interest that shall be accredited to the fund.

### **§ 4.15.010 Air Quality Improvement Trust Fund.**

The city council has previously created an Air Quality Improvement Trust Fund. Such fund shall receive as revenues those amounts received by the city pursuant to Health and Safety Code Sections 44243 and 44244, along with any other monies designated by the city council. Disbursements from such fund shall be used only to finance mobile source air pollution reduction programs. Until expended, all monies in the fund shall be invested to earn interest that shall be accredited to the fund. For purposes of this section, the term "mobile source air pollution reduction program" means any program or project implemented by the city to reduce air pollution emitted from motor vehicles pursuant to the California Clean Air Act of 1988 or the Air Quality Management Plan for the South Coast Air Quality Management District prepared and adopted in accordance with the provisions of Health and Safety Code Sections 40460 through 40470.

### **§ 4.15.015 Revenue Sharing Trust Fund.**

The city council has previously created a Revenue Sharing Trust Fund. Such fund shall receive as revenues those amounts received by the city pursuant to the State and Local Assistance Act of 1972.

### **§ 4.15.020 Self-Insurer's Loss Reserve Fund.**

A. The city council has previously created a Self-Insurer's Loss Fund Trustee Account. Such fund shall receive as revenues those amounts from those sources as designated by and appropriated by the city council. Disbursements from the fund shall be used only to pay for the following:

1. Medical and disability compensation benefits as required by state law for city employees who incur job-related injuries.
2. Premiums for worker's compensation insurance.
3. Costs of worker's compensation claims administration as performed by city staff or by an outside consultant.
4. Fees for legal services required to minimize the city's worker's compensation liability and to recover worker's compensation costs from prior insurers and other third parties.
5. Personnel costs associated with the temporary replacement of injured employees.

6. Salaries, fees and expenses of medical and safety consultants and staff, including appropriate city staff personnel for their expenses.

7. Any other costs required for the city to satisfy its legal obligations under the state worker's compensation laws; to reduce employee injuries and the employee lost time and suffering associated therewith; and to participate in and pay the dues of organizations that serve the needs of employers obligated to pay worker's compensation benefits.

B. The city council has previously created a Liability Insurance Reserve Fund. Such fund shall receive as revenues those amounts from those sources as designated by and appropriated by the city council. Disbursements from the fund shall be used only to pay for the following:

1. Approved liability claims against the city that are within the self-insured limits set by the city council or that fall outside of the scope of coverage provided by the city's excess insurance.

2. Costs associated with liability claims that are within the self-insured limits set by city council. These costs include legal costs, risk management costs, loss prevention program costs, insurance analyst service costs, claims, settlements, additional special investigation service costs, and other related costs. All payments from the fund shall be approved by the city council.

#### **§ 4.15.025 Water Funds.**

A. The city council has previously created a Water Operations Fund. Such fund shall receive as revenues those amounts generated from sources designated by the city council as funds secured through the sale and distribution of water and water services. Disbursements from the fund shall be used only to pay for the following:

1. Costs associated with the maintenance and operations of the water utility.

2. Costs associated with the servicing or the sale or payment of water bonds.

Until expended, all monies in the fund shall be invested to earn interest that shall be credited to the fund. The city council may authorize direct transfers from the fund to other city funds during the fiscal year as the need arises so long as all monies transferred shall be returned to the fund by June 30th of the fiscal year.

B. The city council has previously created a Water Plant and Equipment Fund. The purpose of such fund is to accumulate sufficient monies to pay for the replacement of and capital improvements to the city's water system. The city council shall annually consider appropriations to the fund in accordance with generally accepted methods of determining depreciation on buildings, machinery and other water system equipment. Until expended, all monies in the fund shall be invested to earn interest that shall be credited to the fund. The city council may authorize direct transfers from the fund to other city funds during the fiscal year as the need arises so long as all monies transferred shall be returned to the fund by June 30th of the fiscal year.

#### **§ 4.15.030 Sewer Funds.**

A. The city council has previously created a Sewer Operations Fund. Such fund shall receive as revenues those amounts generated from sources designated by the city council as funds secured through the provision of sewer services. Disbursements from the fund shall be

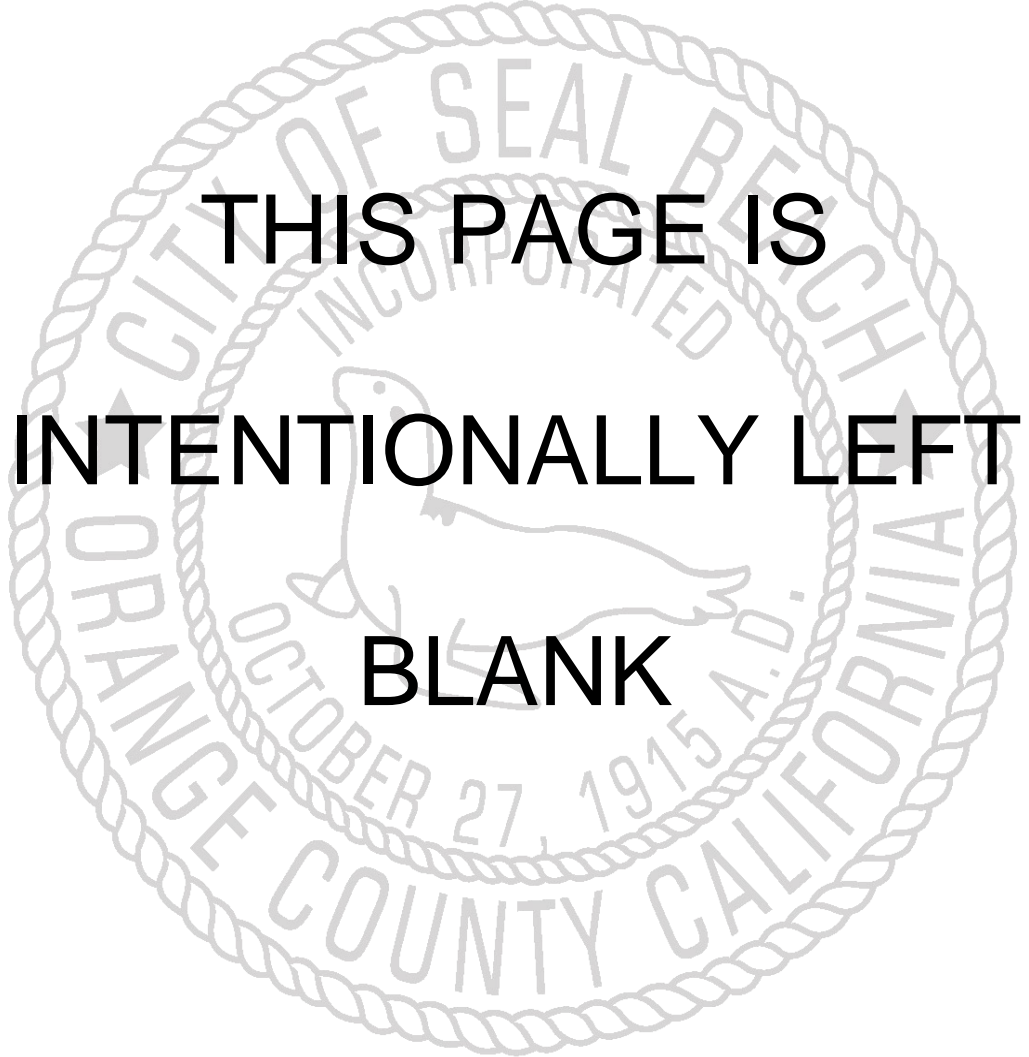
used only to pay those costs directly or indirectly associated with the maintenance and operations of the sewer utility. Until expended, all monies in the fund shall be invested to earn interest that shall be credited to the fund. The city council may authorize direct transfers from the fund to other city funds during the fiscal year as the need arises so long as all monies transferred shall be returned to the fund by June 30th of the fiscal year.

B. The city council has previously created a Sewer Plant and Equipment Fund. The purpose of such fund is to accumulate sufficient monies to pay for the replacement of and capital improvements to the city's sewer system. The city council shall annually consider appropriations to the fund in accordance with generally accepted methods of determining depreciation on buildings, machinery and other sewer system equipment. Until expended, all monies in the fund shall be invested to earn interest that shall be credited to the fund. The city council may authorize direct transfers from the fund to other city funds during the fiscal year as the need arises so long as all monies transferred shall be returned to the fund by June 30th of the fiscal year.

**§ 4.15.035 Landscaping and Lighting District No. 1 Improvement Fund.**

The city council has previously created a Landscaping and Lighting District No. 1 Improvement Fund. Such fund shall receive as revenues those amounts designated by the city council as funds secured through the establishment of Landscaping and Lighting District No. 1. Disbursements from the fund shall be used only to pay those costs associated with the maintenance and operations for such district. Until expended, all monies in the fund shall be invested to earn interest that shall be accredited to the fund.

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## **Chapter 4.20**

### **Transfer of Tax Functions**

#### **§ 4.20.005      Transfer.**

The duties of the assessment of city property for city taxes, the equalization and correction of the assessment, the collection, payment and enforcement of taxes, including delinquent taxes, and the redemption of property from sales or other penalty for the nonpayment of city taxes, now provided by law to be assessed by the assessor and collected by the tax collector and equalized by the city council, shall be performed by the county assessor, the county tax collector, the county auditor and the board of supervisors of the county when acting as a board of equalization.

#### **§ 4.20.010      Payment of Collections to City.**

All moneys collected for and on behalf of the city by the county tax collector and deposited with the county treasurer shall be paid over to the city treasurer without delay.

#### **§ 4.20.015      Compensation of County.**

Compensation paid to the county for the assessment and collection of taxes for and on behalf of the city shall not be more than 1% of the first \$25,000, and not more than .0025% for all sums over and above that amount so collected.

#### **§ 4.20.020      Continuation of County Duties.**

County officials shall continue to assess and collect the real and personal property taxes of the city until such time as this chapter shall be repealed by a vote of the citizens of the city.

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## **Chapter 4.25**

### **Sales and Use Tax**

#### **§ 4.25.005 Purpose.**

The ordinance codified in this chapter has been adopted to achieve, and shall be interpreted to accomplish, the following purposes:

A. To adopt sales and use tax ordinance that complies with the requirements and limitations contained in Revenue and Taxation Code Division 2, Part 1.5.

B. To adopt sales and use tax ordinance that incorporates provisions identical to those of the California Sales and Use Tax Law insofar as those provisions are not inconsistent with the requirements and limitations contained in Revenue and Taxation Code Division 2, Part 1.5.

C. To adopt a sales and use tax ordinance that imposes a tax and provides a measure therefore that can be administered and collected by the state board of equalization in a manner that adapts itself as fully as practicable to, and requires the least possible deviation from, the existing statutory and administrative procedures followed by the state board of equalization in administering and collecting state sales and use taxes.

D. To adopt a sales and use tax ordinance that can be administered in a manner that will, to the degree possible, minimize the cost of collecting city sales and use taxes and at the same time minimize the burden of record keeping upon persons subject to taxation under this chapter.

#### **§ 4.25.010 Operative Date.**

The operative date of the ordinance codified in this chapter is January 1, 1974.

#### **§ 4.25.015 Rate.**

The rate of sales tax and use tax imposed by this chapter shall be 1%.

#### **§ 4.25.020 Contract with State.**

The city shall contract with the state board of equalization to perform all functions incident to the administration and operation of these sales and use tax ordinance.

#### **§ 4.25.025 Sales Tax.**

For the privilege of selling tangible personal property at retail a tax shall be imposed upon all retailers in the city at the rate stated in this chapter of the gross receipts of the retailer from the sale of all tangible personal property sold at retail in the city on and after the operative date.

#### **§ 4.25.030 Place of Sale.**

A. For the purposes of this chapter, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or retailer's agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the state sales and use tax, regardless of the place to which delivery is made.

B. In the event a retailer has no permanent place of business in the state or has multiple places of business, the place or places at which the retail sales are consummated shall be determined under rules and regulations of the state board of equalization.

**§ 4.25.035 Use Tax.**

An excise tax shall be imposed on the storage, use or other consumption in this city of tangible personal property purchased from any retailer on and after the operative date for storage, use or other consumption in this city at the rate stated in this chapter of the sales price of the property. The sales price shall include delivery charges when such charges are subject to state sales or use tax regardless of the place to which delivery is made.

**§ 4.25.040 Adoption of State Law Provisions.**

Except as otherwise provided in this chapter and except insofar as they are inconsistent with the provisions of Revenue and Taxation Code Division 2, Part 1.5, all of the provisions of Revenue and Taxation Code Division 2, Part 1 are hereby adopted and made a part of this chapter as though fully set forth herein.

**§ 4.25.045 Limitations on Adoption of State Law.**

In adopting the provisions of Revenue and Taxation Code Division 2, Part 1, wherever the state is named or referred to as the taxing agency, the name of the city shall be substituted therefore. Notwithstanding the preceding, the substitution shall not be made in the following circumstances:

A. When the word "state" is used as part of the title of the state controller, the state treasurer, the state board of control, the state board of equalization, the state treasury, or the Constitution of the State of California.

B. When the result of that substitution would require action to be taken by or against the city, or any agency thereof rather than by or against the state board of equalization, in performing the functions incident to the administration or operation of this chapter.

C. In those sections, including without limitation sections referring to the exterior boundaries of the state, where the result of the substitution would be to provide an exemption from this tax with respect to certain sales, storage, use or other consumption of tangible personal property that would not otherwise be exempt from this tax while such sales, storage, use or other consumption remain subject to tax by the state under the provisions of Revenue and Taxation Code Division 2, Part 1, or to impose this tax with respect to certain sales, storage, use or other consumption of tangible personal property that would not be subject to tax by the state under such provisions.

D. In Revenue and Taxation Code Sections 6701, 6702 (except in the last sentence thereof), 6711, 6715, 6737, 6797, or 6828.

E. In the phrase "retailer engaged in business in this State" in Revenue and Taxation Code Section 6203 or in the definition of that phrase in Section 6203.

**§ 4.25.050 Seller's Permit Not Required.**

If a seller's permit has been issued to a retailer under Revenue and Taxation Code Section 6067, an additional seller's permit shall not be required by this chapter.

**§ 4.25.055 Exemptions.**

A. The amount subject to tax shall not include any sales or use tax imposed by the state upon a retailer or consumer.

B. The storage, use, or other consumption of tangible personal property, the gross receipts from the sales of which have been subject to tax under a sales and use tax ordinance enacted in accordance with Revenue and Taxation Code Division 2, Part 1.5 by any city and county, county, or city, in this state shall be exempt from the tax due under this chapter.

C. There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of tangible personal property to operators of aircraft to be used or consumed principally outside the city in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of the state, the federal government, or any foreign government.

D. In addition to the exemptions provided in Revenue and Taxation Code Sections 6366 and 6366.1, the storage, use or other consumption of tangible personal property purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws of the state, the federal government, or any foreign government is exempted from the use tax.

**§ 4.25.055 Exemptions.\***

*\*This Section 4.25.055 shall be operative on the operative date of any act of the California Legislature amending Revenue and Taxation Code Section 7202 or repealing and reenacting Revenue and Taxation Code Section 7202 to provide an exemption from city sales and use taxes for operators of waterborne vessels in the same, or substantially the same, language as that existing in subdivisions (i)(7) and (i)(8) of Revenue and Taxations Code Section 7202 as those subdivisions read on October 1, 1983.*

A. The amount subject to tax shall not include any sales or use tax imposed by the state upon a retailer or consumer.

B. The storage, use, or other consumption of tangible personal property, the gross receipts from the sale of which have been subject to tax under a sales and use tax ordinance enacted in accordance with Revenue and Taxations Code Division 2, Part 1.5 by any city and county, county, or city in the state shall be exempt from the tax due under this chapter.

C. There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of tangible personal property to operators of waterborne vessels to be used or consumed principally outside the city in which the sale is made and directly and exclusively in the carriage of persons or property in such vessels for commercial purposes.

D. The storage, use, or other consumption of tangible personal property purchased by operators of waterborne vessels and used or consumed by such operators directly and exclusively in the carriage of persons or property in such vessels for commercial purposes is exempted from the use tax.

*E. There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of tangible personal property to operators of aircraft to be used or consumed principally outside the city in which the sale is made and directly and exclusively in the use of such aircraft as common carriers of persons or property under the authority of the laws of the state, the federal government or any foreign government.*

*F. In addition to the exemptions provided in Revenue and Taxations Code Sections 6366 and 6366.1 the storage, use or other consumption of tangible personal property purchased by operators of aircraft and used or consumed by such operators directly and exclusively in the use of such aircraft as common carriers of persons or property for hire or compensation under a certificate of public convenience and necessity issued pursuant to the laws to the state, the federal government, or any foreign government is exempted from the use tax.*

**§ 4.25.060 Amendments.**

All subsequent amendments of the Revenue and Taxation Code that relate to the sales and use tax and are not inconsistent with Revenue and Taxations Code Division 2; Part 1.5 shall automatically become a part of this chapter.

**§ 4.25.065 Enjoining Collection Forbidden.**

No injunction or writ of mandate or other legal or equitable process shall issue in any suit, or action against proceedings in any court against the state or this city, or against any officer of the state or this city, to prevent or enjoin the collection under this chapter, or Revenue and Taxations Code Division 2, Part 1.5 of any tax or any amount of tax required to be collected.

\* \* \* \* \*

## **Chapter 4.30**

### **Property Development Excise Tax**

#### **§ 4.30.005 Definitions.**

For the purpose of this chapter, the following words and phrases shall mean:

A. Apartment Unit: a dwelling designed for human occupancy where there are 3 or more dwelling units, each containing a kitchen, occupying a single lot or parcel of land.

B. Bachelor Apartment: a dwelling or portion thereof designed for human occupancy, which has one or more rooms with bath, without kitchen or cooking facilities, in a multiple dwelling.

C. Commercial Unit: any space in a building or structure designed or intended to be occupied or used for business or commercial purposes. "Commercial unit" includes without limitation sleeping rooms in hotels and motels without kitchens or kitchen facilities.

D. Duplex Unit: a dwelling designed for human occupancy where there are 2 dwelling units each containing a kitchen occupying a single lot or parcel of land.

E. Industrial Unit: any space in a building or structure designed or intended for manufacturing, processing, research, warehousing and similar uses.

F. Mobile Home Park: any area where one or more lots or spaces are rented or held out for rent to be occupied by a house trailer, travel trailer, mobile home, camper or similar vehicle.

G. Residential Unit: a single-family dwelling, designed for human occupancy where there is only one such unit on a lot or parcel of land.

#### **§ 4.30.010 Rates.**

The rates of the tax are:

A. Single-family dwelling: \$75 for each dwelling unit.

B. Duplex unit: \$65 for each dwelling unit.

C. Apartment unit: \$55 for each dwelling unit.

D. Bachelor apartment: \$50 for each dwelling unit.

E. Mobile home park space: \$45 for each space or lot.

F. Commercial: For each commercial building or commercial unit in a building, the amount of 1¢ per square foot or gross floor area including any area in a building designed for the parking of vehicles.

G. Industrial: For each industrial building or industrial unit in a building, the amount of 1¢ per square foot of gross floor area including any area in a building designed for the parking of vehicles.

**§ 4.30.015 Imposition.**

A. An excise tax shall be imposed upon the construction and occupancy of each residential unit, apartment unit, duplex unit, bachelor apartment, mobile home park, space, commercial unit, and industrial unit in the city.

B. No person shall begin construction of any residential building, commercial or industrial unit or building or any mobile home park in the city without first having paid the tax and any penalty and interest due the city under this chapter.

C. No occupancy permit shall be issued for, and no person shall occupy or offer for occupancy, any residential building, commercial or industrial unit or building or any space in a mobile home park in the city unless the tax and any penalty and interest imposed upon the construction and occupancy thereof by this chapter have been paid.

**§ 4.30.020 Exemption for Replacement Units or Spaces.**

The city shall not impose an excise tax for a new unit or space to be constructed and occupied where such new unit or space is replacing a demolished unit or space, based upon a formula of one exempted unit or space per one replaced unit or space.

**§ 4.30.025 Determination.**

The amount of the tax due hereunder shall be determined at the time a building permit is sought for the construction of residential buildings, commercial or industrial units or buildings or for the construction or reconstruction of any mobile home park, and the full amount of the tax shall be due and payable concurrently with the application for such permit. If such tax is not fully paid on or before the date the permit is issued, the tax or the amount thereof not paid shall thereupon become delinquent.

**§ 4.30.030 Delinquency.**

There shall be added to the tax for any unit or so much of the tax as becomes delinquent a penalty of 25%, which shall thereupon become payable in the same manner as the tax. The tax and penalty shall bear interest at the prime lending rate per month until paid.

**§ 4.30.035 Collection.**

The director of administrative services/treasurer shall collect the tax and any penalty and interest due hereunder. The full amount due under this chapter shall constitute a debt to the city. An action for the collection thereof may be commenced in the name of the city in any court having jurisdiction.

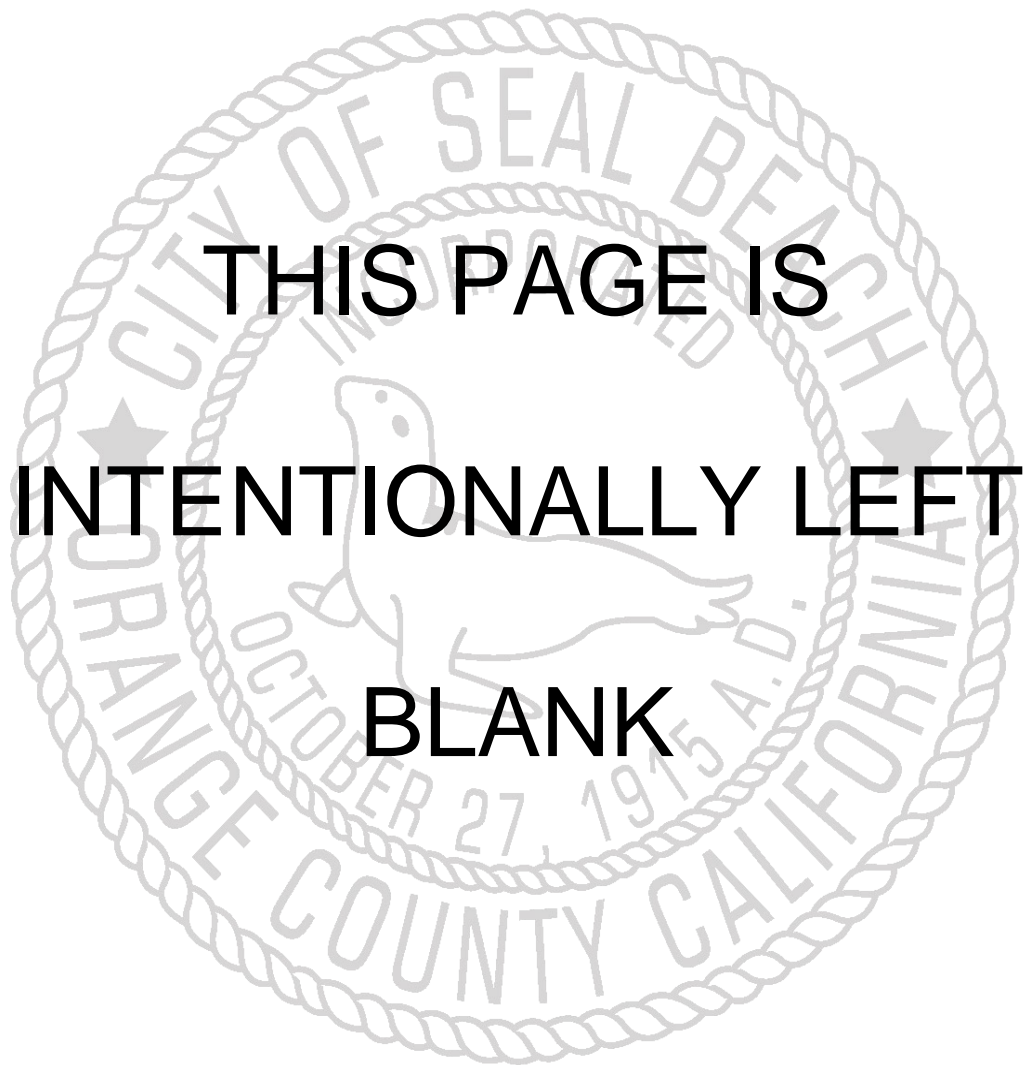
**§ 4.30.040 Refunds.**

Any tax, penalty or interest paid to the city under this chapter for any building or unit of a building or mobile home park that is not constructed shall be refunded upon application of the taxpayer and a showing to the satisfaction of the director of administrative services/treasurer that the building, unit or mobile home park has not been constructed or construction commenced and that the building permit issued for such building, unit or mobile home park has been cancelled or surrendered or otherwise does not authorize the construction of such building, unit or mobile home park.

**§ 4.30.045      Disposition.**

All proceeds from the tax, penalty and interest collected under this chapter shall be paid into a special capital outlays fund of the city entitled "Capital Outlays Fund for Acquiring, Constructing and Equipping of Fire Stations, Parks, and Public Service Facilities," which fund has previously been created. Such fund shall be used only for the purpose of acquiring, building, improving, expanding and equipping city fire stations, city parks and other public service facilities as determined by the city council.

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## Chapter 4.35 Transient Occupancy Tax

### § 4.35.005      **Definitions.**

For the purpose of this chapter, the following words and phrases shall mean:

A.      Hotel: any structure, or any portion of any structure, that is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes. "Hotel" includes without limitation: hotel; inn; tourist home or house; motel; studio hotel; bachelor hotel; lodging house; rooming house; apartment house; dormitory; public or private club; mobile home; or house trailer at a fixed location or other similar structure or portion thereof.

B.      Occupancy: the use or possession, or the right to the use or possession, of any room or rooms or portion thereof in any hotel for dwelling, lodging or sleeping purposes.

C.      Operator: the person who is proprietor of the hotel, whether in the capacity of owner, lessee, sub lessee, mortgagee in possession, licensee or any other capacity. Where the operator utilizes a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as the principal. Compliance with the provisions of this chapter by either the principal or the managing agent shall, however, be considered to be compliance by both.

D.      Rent: the consideration charged, whether or not received, for the occupancy of space in a hotel valued in money, whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits and property and services of any kind or nature, without any deduction therefrom whatsoever.

E.      Tax Administrator: city treasurer.

F.      Transient: any person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license or other agreement.

### § 4.35.010      **Imposition.**

A.      Rate. For the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax in the amount of 12% of the rent charged by the operator. (Ord. No. 1541)

B.      Payment. The transient shall pay the tax to the operator of the hotel at the time the rent is paid. If the rent is paid in installments, a proportionate share of the tax shall be paid with each installment. The unpaid tax shall be due upon the transient's ceasing to occupy space in the hotel. If for any reason the tax due is not paid to the operator of the hotel, the tax administrator may require that such tax shall be paid directly to the tax administrator.

C.      Liability. Any tax required to be paid by any transient under the provisions of this chapter shall be deemed a debt owed by the transient to the city. Any such tax collected by an operator that has not been paid to the city shall be deemed a debt owed by the operator to the city. Any person owing money to the city under the provisions of this chapter shall be liable in an action brought in the name of the city for the recovery of such amount.

D.      Maximum. Any individual who exercises occupancy or is entitled to occupancy in a hotel shall not be required to pay the tax for any day in excess of 30 consecutive days of such occupancy.

**§ 4.35.015 Sublessor Liability.**

In the event that an agreement exists between the hotel and any person for occupancy for a period in excess of 30 days, and in the event that such person allows occupancy by another person as subtenant, guest, licensee or permittee, the person who has made the agreement with the hotel shall be subject to and shall pay the tax provided for herein.

**§ 4.35.020 Exemptions.**

A. No tax shall be imposed upon:

1. Any person as to whom, or any occupancy as to which, it is beyond the power of the city to impose the tax herein provided.

2. Any federal or state officer or employee when on official business.

3. Any officer or employee of a foreign government who is exempt by reason of express provision of federal law or international treaty.

4. Any individual who exercises occupancy or is entitled to occupancy in a hotel for a period of 31 consecutive days or more pursuant to an agreement in writing between the operator and the occupant.

B. No exemption shall be granted except upon a claim therefore made at the time rent is collected and under penalty of perjury upon a form prescribed by the tax administrator.

**§ 4.35.025 Collection.**

Each operator shall collect the tax imposed by this chapter to the same extent and at the same time as the rent is collected from every transient. The amount of tax shall be separately stated from the amount of the rent charged, and each transient shall receive a receipt for payment from the operator.

**§ 4.35.030 Prohibited Advertisements.**

No operator of a hotel shall advertise or state in any manner that the tax or any part thereof will be assumed or absorbed by the operator, or that it will not be added to the rent, or that, if added, any part will be refunded except in the manner hereinafter provided.

**§ 4.35.035 Registration Certificate.**

Within 30 days after commencing business, each operator of any hotel renting occupancy to transients shall register such hotel with the tax administrator and shall obtain a "Transient Occupancy Registration Certificate" to be at all times posted in a conspicuous place on the premises. Such certificate shall, among other things, state the following:

A. The name of the operator.

B. The address of the hotel.

C. The date upon which the certificate was issued.

The substance of the following statement: "This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Seal

Beach Transient Occupancy Tax Ordinance by registering with the Tax Administrator for the purpose of collecting from transients the Transient Occupancy Tax and remitting the tax to the Tax Administrator. This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, nor to operate a hotel without strictly complying all applicable laws, including but not limited to those requiring a permit from any board, commission, department or office of the City of Seal Beach. This certificate does not constitute a permit.”

#### **§ 4.35.040      Remittance.**

Each operator shall, on or before the last day of the month following the close of each calendar quarter, or at the close of any shorter reporting period that may be established by the tax administrator, make a report to the tax administrator, on forms provided by such official, of the total rents charged and received and the amount of tax collected for transient occupancies. At the time the report is filed, the full amount of the tax collected shall be remitted to the tax administrator. The tax administrator may establish shorter reporting periods for any certificate holder if deemed necessary in order to insure collection of the tax and may require further information in the return. Returns and payments are due immediately upon cessation of business for any reason. All taxes collected by operators pursuant to this chapter shall be held in trust for the account of the city until payment thereof is made to the tax administrator.

#### **§ 4.35.045      Delinquency.**

A.      Original Delinquency. Any operator who fails to remit any tax imposed by this chapter within the time required shall pay a penalty of 10% of the amount of the tax in addition to the amount of the tax.

B.      Continued Delinquency. Any operator who fails to remit any delinquent remittance on or before a period of 30 days following the date on which the remittance 1st became delinquent shall pay a 2nd delinquency penalty of 10% of the amount of the tax in addition to the amount of the tax and the 10% penalty first imposed.

C.      Fraud. If the tax administrator determines that the nonpayment of any remittance due under this chapter is due to fraud, a penalty of 25% of the amount of the tax shall be added thereto.

D.      Interest. In addition to the penalties imposed, any operator who fails to remit any tax imposed by this chapter shall pay interest at the prime lending rate per month or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.

E.      Penalties Merged With Tax. Every penalty imposed and such interest as accrues under the provisions of this section shall become a part of the tax herein required to be paid.

#### **§ 4.35.050      Tax Administrator Determination.**

A.      If any operator shall fail or refuse to collect the tax and to make, within the time provided in this chapter, any report and remittance of such tax or any portion thereof required by this chapter, the tax administrator shall proceed in such manner as deemed appropriate to obtain facts and information on which to estimate the tax due. Upon gathering sufficient facts, the tax administrator shall determine and assess against such operator the tax, interest and penalties referenced in this chapter.

B.      The tax administrator shall provide notice of the assessment to the operator. An operator may within 10 days after the service of notice request a hearing with the tax

administrator. If the operator fails to file a timely request, the tax, interest and penalties, if any, determined by the tax administrator shall become final and conclusive and immediately due and payable. If a request is timely filed, the tax administrator shall provide not less than 5 days written notice to the operator of a hearing to show cause at a time and place fixed in such notice. At such hearing, the operator may appear and offer evidence contesting the assessment, or any portion thereof. After such hearing the tax administrator shall determine the proper tax to be remitted and shall thereafter give written notice to the person of such determination and the amount of tax, interest and penalties. The operator shall pay such amount within 15 days unless an appeal of the tax administrator's determination is appealed as provided in this chapter. (Ord. No. 1533)

#### **§ 4.35.055      Appeal.**

An operator may appeal the determination made pursuant to Section 4.30.050 by filing a notice of appeal with the city clerk within 10 days of the service of the determination. The city clerk shall fix a time and place for a hearing before the city council, and provide written notice to the operator at least 5 days before the hearing. After the hearing, the city council shall issue its decision and findings. The decision and findings of the city council shall be final and conclusive. The city shall provide written notice to the operator of the council's decision and findings within 10 days of the decision. Any amount assessed shall be immediately due and payable upon the service of notice. (Ord. No. 1533)

#### **§ 4.35.060      Records Maintenance.**

It shall be the duty of every operator liable for the collection and payment to the city of any tax imposed by this chapter to keep and preserve, for a period of 3 years, all records as may be necessary to determine the amount of such tax, which records the tax administrator shall have the right to inspect at all reasonable times.

#### **§ 4.35.065      Refunds.**

A. Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once, or has been erroneously or illegally collected or received by the city under this chapter it may be refunded as provided in this section if a written claim, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the tax administrator within 3 years of the date of payment. The claim shall be on forms furnished by the tax administrator.

B. An operator may claim a refund or take as credit against taxes collected and remitted the amount overpaid, paid more than once or erroneously or illegally collected or received when it is established in a manner prescribed by the tax administrator that the person from whom the tax has been collected was not a transient; provided, however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the transient or credited to rent subsequently payable by the transient to the operator.

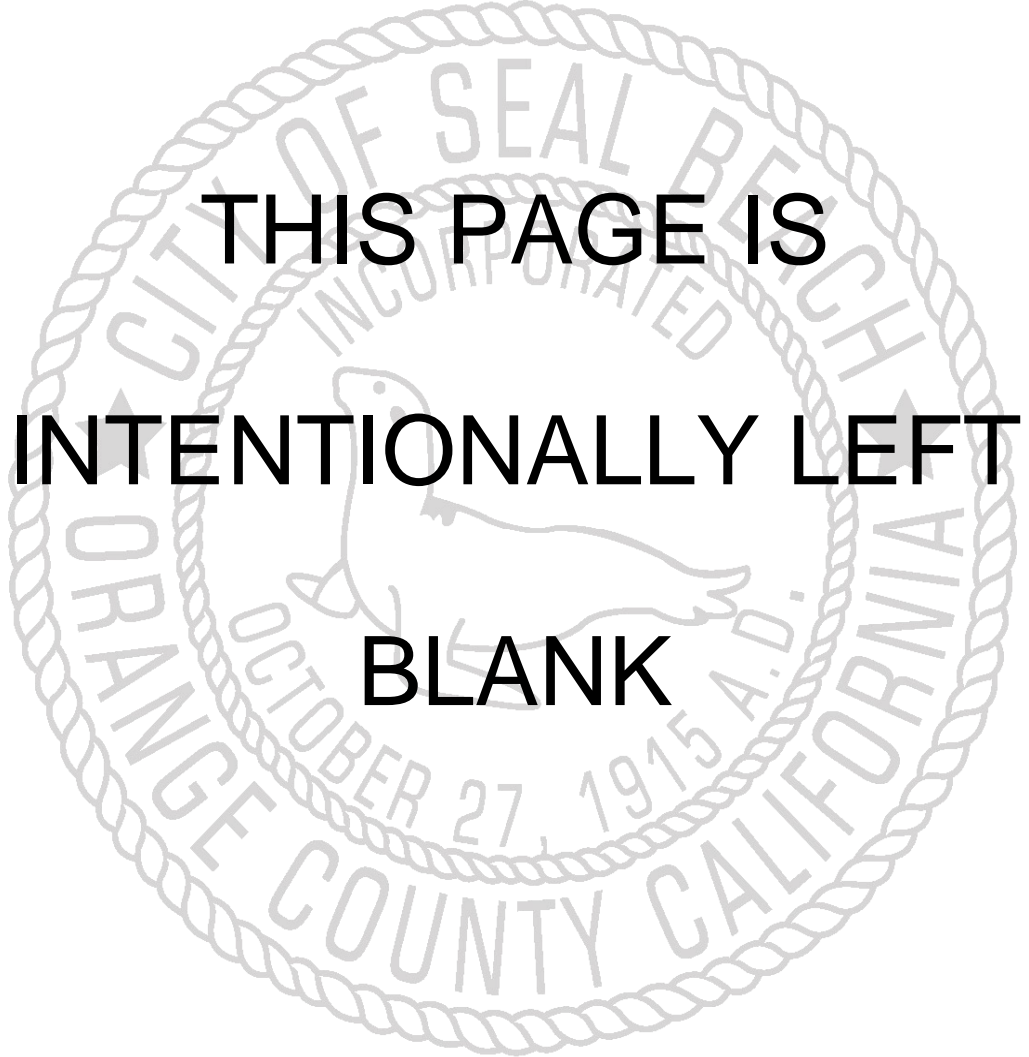
C. A transient may obtain a refund of taxes overpaid or paid more than once or erroneously or illegally collected or received by the city by filing a claim in the manner provided in this section, but only when the tax was paid by the transient directly to the tax administrator, or when the transient, having paid the tax to the operator, establishes to the satisfaction of the tax administrator that the transient has been unable to obtain a refund from the operator who collected the tax.

D. No refund shall be paid under the provisions of this section unless the claimant establishes a right thereto by written records showing entitlement thereto.

**§ 4.35.070      Violations.**

Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor. Any operator or other person who fails or refuses to register as required herein, or to furnish any return required to be made, or who fails or refuses to furnish a supplemental return or other data required by the tax administrator, or who renders a false or fraudulent return or claim, is guilty of a misdemeanor. Any person required to make, render, sign or verify any report or claim that makes any false or fraudulent report or claim with intent to defeat or evade the determination of any amount due is guilty of a misdemeanor.

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## **Chapter 4.40**

### **Real Property Transfer Tax**

#### **§ 4.40.005 Authority.**

This chapter is adopted pursuant to Revenue and Taxation Code Section 11901 et seq.

#### **§ 4.40.010 Imposition.**

A tax at the rate of \$0.275 for each \$500, or fractional part thereof, shall be imposed on each deed, instrument or writing by which any lands, tenements, or other realty sold within the city shall be granted, assigned, transferred or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person or persons, when the consideration or value of the interest or property conveyed (exclusive of the value of any lien or encumbrances remaining thereon at the time of sale) exceeds \$100.

#### **§ 4.40.015 Payment.**

Any tax imposed pursuant to this chapter shall be paid by any person who makes, signs or issues any document or instrument subject to the tax, or for whose use or benefit the same is made, signed or issued.

#### **§ 4.40.020 Exemptions.**

Any tax imposed pursuant to this chapter shall not apply to the following:

- A. Any instrument or writing given to secure a debt.
- B. Any deed, instrument or writing to which the federal government, a state, territory or political subdivision thereof is a party, when the exempt agency is acquiring title.
- C. The making, delivering or filing of conveyances to make effective any plan of reorganization or adjustment that is either:
  - 1. Confirmed under the Federal Bankruptcy Act, as amended.
  - 2. Approved in an equity receivership proceeding in a court involving a railroad corporation, as defined in subdivision (m) of Section 205 of Title 11 of the United States Code, as amended.
  - 3. Approved in an equity receivership proceeding in a court involving a corporation, as defined in subdivision (3) of Section 506 of Title 11 of the United States Code, as amended.
  - 4. Whereby a mere change in identity, form or place of organization is affected.

This paragraph shall only apply if the making, delivery or filing of instruments of transfer or conveyances occurs within 5 years from the date of such confirmation, approval or change.

D. The making or delivery of conveyances to make effective any order of the Securities and Exchange Commission, as defined in subdivision (a) of Section 1083 of the Internal Revenue Code of 1954, but only if all of the following are satisfied:

1. The order recites that such conveyance is necessary or appropriate to effectuate the provisions of Section 79K of Title 15 of the United States Code, relating to the Public Utility Holding Company Act of 1935.

2. The order specifies the property that is ordered to be conveyed.

3. The conveyance is made in obedience to such order.

E. Partnerships.

1. In the case of any realty held by a partnership, no levy shall be imposed pursuant to this chapter by reason of any transfer of an interest in a partnership or otherwise, if both of the following are satisfied:

a. The partnership (or another partnership) is considered a continuing partnership within the meaning of Section 708 of the Internal Revenue Code of 1954.

b. Such continuing partnership continues to hold the realty concerned.

2. If there is a termination of any partnership within the meaning of Section 708 of the Internal Revenue Code of 1954, for purposes of this chapter, such partnership shall be treated as having executed an instrument whereby there was conveyed, for fair market value (exclusive of the value of any lien or encumbrance remaining thereon), all realty held by such partnership at the time of such termination. Not more than one tax shall be imposed pursuant to this chapter by reason of a termination, and any transfer pursuant thereto, with respect to the realty held by such partnership at the time of such termination.

**§ 4.40.025 Administration.**

The county recorder shall administer this chapter in conformity with the provisions of Revenue and Taxation Code Division 2, Part 6.7 and the provisions of any county ordinance adopted pursuant thereto.

**§ 4.40.030 Refunds.**

Claims for refund of taxes imposed pursuant to this chapter shall be governed by the provisions of Revenue and Taxation Code Section 5096 et seq.

**§ 4.40.035 Operative Date.**

This chapter shall become operative upon the operative date of any ordinance adopted by the county, pursuant to Revenue and Taxation Code Section 11901 et seq. or upon the effective date of this chapter whichever is the later.

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## **Chapter 4.45**

### **Environmental Reserve Tax**

#### **§ 4.45.005 Findings.**

The city council previously has determined that the development and construction of new residential living units within the city creates an immediate and present danger to the existing quality of life and ecology of the city, and threatens to contaminate and pollute the air, water and land within and surrounding the city, and threatens to burden and overtax existing public facilities that provide public services, police and fire protection, public utilities, water, and the treatment and disposal of sanitary sewage, which thus pose a direct threat and danger to the health, safety and general welfare of the city and its inhabitants, and their environment. The city council further determined that the imposition and collection of a special, non-recurring tax upon the occupancy and construction of new residential dwelling units within the city is the most practical and equitable method of providing revenues with which the city may address the serious ecological and environmental problems created by the occupancy and construction of such new residential dwelling units within the city.

#### **§ 4.45.010 Definitions.**

For the purpose of this chapter, the following words and phrases shall mean:

A. Dwelling Unit: any dwelling designed for human occupancy that has one or more rooms, with or without a kitchen or cooking facilities. "Dwelling unit" does not include a "hotel" as defined in the transient occupancy tax ordinance.

B. Conforming Dwelling Unit: any dwelling unit situated within a RLD Zone and having a minimum floor area of at least 1,200 square feet, and any such dwelling unit situated within a RMD Zone and having a floor area of at least 1,000 square feet and any such dwelling unit within a RHD Zone and having a floor area of at least 700 square feet.

C. Non-conforming Dwelling Unit: any dwelling unit situated within a RLD Zone and having a floor area of less than 1,200 square feet, and any such dwelling situated within an RMD Zone and having a floor area less than 1,000 square feet, and any such dwelling unit within an RHD Zone and having a floor area of less than 700 square feet.

#### **§ 4.45.015 Imposition.**

A. An environmental reserve tax shall be imposed upon the occupancy and construction of each new dwelling unit within the city.

B. No occupancy permit shall be issued for, and no person shall occupy or offer for occupancy, any dwelling unit in the city unless the tax and any penalty or interest imposed upon the occupancy and construction thereof by this chapter has been paid.

#### **§ 4.45.020 Rates.**

The rates of the environmental reserve tax are:

A. 151¢ per square foot for each square foot of floor area within each conforming dwelling unit located on any of the first 3 floors of any building so occupied or constructed within the city.

B. 351¢ per square foot for each square foot of floor area within each non-conforming dwelling unit located on any of the first 3 floors of any building so occupied or constructed within the city.

**§ 4.45.025 Determination.**

The amount of tax due hereunder shall be determined prior to the issuance of any occupancy permit for any dwelling unit subject to the tax. The full amount of the tax shall be due and payable to the city concurrently with any application for an occupancy permit for such dwelling unit or units.

**§ 4.45.030 Delinquency.**

There shall be added to the tax for any such dwelling unit, or so much of the tax as becomes delinquent, a penalty of 25%, which shall thereupon become payable in the same manner as the tax. The tax and penalty shall bear interest at the prime lending rate per month until paid.

**§ 4.45.035 Collection.**

The director of finance shall collect the tax and any penalty and interest due hereunder. The full amount due under this chapter shall constitute a debt to the city. An action for the collection thereof may be commenced in the name of the city in any court having jurisdiction.

**§ 4.45.040 Refunds.**

Any tax, penalty or interest paid under this chapter for any dwelling unit that is not constructed shall be refunded upon application of the taxpayer and showing to the satisfaction of the director of administrative services/treasurer that the dwelling unit has not been constructed or construction commenced and that the building permit issued for such dwelling unit has been cancelled or surrendered or otherwise does not authorize the construction of such dwelling unit.

**§ 4.45.045 Disposition.**

All proceeds from the tax, penalty and interest collected under this chapter shall be paid into a special capital outlays fund of the city to provide open space, improve the quality of life and the ecology of the city, or of any distressed or environmentally endangered portion thereof, and to fight pollution and contamination of the air, water and land within and surrounding the city, to be entitled the "Environmental Reserve Fund," which fund has previously been created. Such fund shall be used only for the purposes of purchasing land, constructing buildings and improvements, and purchasing machinery, equipment and other capital type facilities with which the city may develop, improve, and expand public parks, public services, police and fire protection and public utilities, water, and the treatment and disposal of sanitary sewage. In expending such fund for these purposes, the city may act alone or may exercise its powers jointly with any other public entity to accomplish any of the foregoing purposes for the benefit of the whole, or any portion, of the city.

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## **Chapter 4.50**

### **Utility Users Tax**

#### **§ 4.50.005 Purpose.**

The taxes imposed by this chapter previously have been established solely to raise revenue for the general governmental purposes of the city. The revenues generated thereby shall be deposited in the general fund of the city and may be expended for any proper municipal purpose.

#### **§ 4.50.010 Definitions.**

For the purpose of this chapter, the following words and phrases shall mean:

- A. Month: a calendar month.
- B. Service User: a person required to pay a tax imposed by this chapter.
- C. Service Supplier: a person required to collect and remit a tax imposed by this chapter.
- D. Cogeneration Technology: the use for the generation of electricity of exhaust steam, waste steam, heat, or resultant energy from an industrial, commercial or manufacturing plant or process, or the use of exhaust steam, waste steam, or heat from a thermal power plant for an industrial, commercial, or manufacturing plant or process.
- E. Telephone Communication Services: services that provide access to a telephone system and the privilege of telephone communication with substantially all persons having telephone stations that are part of such telephone system.
- F. Fuel: natural or manufactured gas or any alternate hydrocarbon fuel that may be substituted therefore.
- G. Director: director of administrative services/treasurer.

#### **§ 4.50.015 Exemptions.**

A. Nothing in this chapter shall be construed as imposing a tax in the following circumstances:

- 1. When imposition of such tax would be in violation of the federal or state constitution.
- 2. Upon any individual 65 years of age or older who uses telephone, electric, or gas services, in or upon any premises occupied by such individual, provided that the combined adjusted gross income (as such term is used for federal income tax purposes) of all members of the household in which such individual resides, for the calendar year prior to the fiscal year (July 1st through June 30th) for which the exemption provided in this section is applied (as documented by a copy of the current federal income tax return(s) or California Senior Citizen Property Tax Assistance Claim Form(s) FTB Form 9000), is less than the maximum qualifying income for California Senior Citizen Property Tax Assistance provided for the calendar year ending within the fiscal year for which the exemption is applied.

B. Any service user exempt from the taxes imposed by this chapter because of age and household income, may file an application with the director for an exemption. Such

application shall be made upon forms supplied by the director and shall recite facts under oath that qualify the applicant for an exemption. The director shall review all such applications and certify as exempt those applicants determined to qualify therefore and shall notify all service suppliers affected that such exemption has been approved, stating the name of the applicant, the address to which such exempt service is being supplied, the account number, if any, and such other information as may be necessary for the service supplier to remove the exempt service user from its tax billing procedure. Upon receipt of such notice, the service supplier shall not be required to continue to bill any further tax imposed by this chapter from such exempt service user until further notice by the director is given. The service supplier shall eliminate such exempt service user from its tax billing procedure for the 1st regular full billings dated on or after November 1, 1975, upon receipt of such notice from the director prior to October 1, 1975, and thereafter, no later than 60 days after receipt of such notice from the director.

C. All exemptions shall continue and be renewed automatically by the director so long as the prerequisite facts supporting the initial qualification for exemption shall continue; provided, however, that the exemption shall automatically terminate with any change in the service address or residence of the exempt individual; further provided, such individual may nevertheless apply for a new exemption with each change of address or residence. Any individual exempt from the tax shall notify the director within 10 days of any change in fact or circumstance that might disqualify said individual from receiving such exemption. It shall be a misdemeanor for any person to knowingly receive the benefits of the exemption provided by this section when the basis for such exemption either does not exist or ceases to exist. Any service supplier who determines by any means that a new or nonexempt service user is receiving service through a meter or connection exempt by virtue of an exemption issued to a previous user or exempt user of the same meter or connection shall immediately notify the director of such fact. The director shall conduct an investigation to ascertain whether or not the provisions of this section have been complied with, and, where appropriate, order the service supplier to commence collecting the tax from the nonexempt service user.

#### **§ 4.50.020 Telephone Users Tax.**

A. There is hereby imposed a tax upon every person in the city using intrastate, interstate (including the District of Columbia) or international telephone communication services in the city. The tax imposed by this section shall be at the rate of 11% of the charges made for such services and shall be paid by the person paying for such services. The tax shall apply to all charges billed to a telephone account having a situs in the city, irrespective of whether a particular telephone service originates and/or terminates within the city.

B. As used in this section, the term "charges" shall not include charges for services paid for by inserting coins in coin-operated telephones except that where such coin operated telephone service is furnished for a guaranteed amount, the amounts paid under such guarantee plus any fixed monthly or other periodic charge shall be included in the base for computing the amount of tax due; nor shall the term "telephone communication services" include land mobile services or maritime mobile services. The term "land mobile services" shall mean a mobile service between base stations and land mobile stations, or between land mobile stations. The term "maritime mobile services" shall mean a mobile service between coast stations and ship stations, or between ship stations, or between associated on-board communication stations. (Ord. No. 1550)

C. The tax imposed in this section shall be collected from the service user by the person providing the intrastate, interstate or international telephone communication services. The amount collected in a month shall be remitted to the director and shall be due on or before the 20th day of the following month. If remitted by mail, such remittance shall be postmarked on or before the 20th day of the following month; provided, however, that if the 20th day falls on a weekend or legal holiday, and the remittance is made by mail, the remittance shall be postmarked as of the 1st business day following such weekend or legal holiday.

D. The tax imposed under this section shall not be imposed upon any of the following payments: (Ord. No. 1550)

1. News Services. Except with respect to local telephone service, payment received from any person for services used in the collection of news for the public press, or a news ticker service furnishing a general news service similar to that of the public press, or radio broadcasting, or in the dissemination of news through the public press, if the charge for such service is billed in writing to such person.

2. International Organizations and the Red Cross. Payment received for services furnished to an international organization, or to the American National Red Cross.

3. Servicemen in Combat Zone. Payment received for any toll telephone service which originates within a combat zone from a member of the Armed Forces of the United States performing service in such combat zone, provided a certificate, setting forth such facts as the Secretary of the Treasury may by regulations prescribe, is furnished to the person receiving such payment.

4. Common Carriers and Communications Companies. The amount paid for any toll telephone service to the extent that the amount so paid is for use by a common carrier, telephone or telegraph company, or radio broadcasting station or network in the conduct of its business as such.

5. Installation Charges. The amount paid for the installation of any instrument, wire, pole, switchboard, apparatus, or equipment as is properly attributable to such installation.

6. Non-Profit Hospitals. The amount paid by a non-profit hospital for services furnished to such organization. For purposes of this subsection, the term "non-profit hospital" means a hospital that is exempt from state and federal income tax under section 501(a) of the Internal Revenue Code.

7. State and Local Governmental Exemption. Any payment received for services or facilities furnished to the government of any State, or any political subdivision thereof, or the District of Columbia.

8. Non-Profit Educational Organizations. Any amount paid by a non-profit educational organization for services or facilities furnished to such organization. For purposes of this subsection, the term "non-profit educational organization" means an educational organization that is exempt from income tax under section 501(a) of the Internal Revenue Code. The term also includes a school operated as an activity of an organization that exempt from income tax under section 501(a), if such school normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.

E. The duty to collect the tax, for interstate and international communication services, shall commence with the 1st regular billing period of each service user ending on or after July 1, 1989.

#### **§ 4.50.025 Electricity Users Tax.**

A. There is hereby imposed a tax upon every person in the city using electrical energy in the city. The tax imposed by this section shall be at the rate of 11% of the charges made for such energy and shall be paid by the person paying for such energy. "Charges" as

used in this section, shall include charges made for (i) metered energy, and (ii) minimum charges for service, including customer charges, service charges, standby charges, charges for temporary services, demand charges and annual and monthly charges and any other charges or cost adjustments authorized by the California Public Utilities Commission or the Federal Energy Regulatory Commission.

B. As used in this section, the term “using electrical energy” shall not mean the storage of such energy by a person in a battery owned or possessed for use in an automobile or other machinery or device apart from the premises upon which the energy was received; provided, however, that the term shall include the receiving of such energy for the purpose of using it in the charging of batteries. Nor shall the term include the mere receiving of such energy by an electrical public utility or governmental agency at a point within the city for resale; or the use of such energy in the production or distribution of water by a public utility or a governmental agency. The term “using electrical energy” shall be construed as including a person using or purchasing power produced by cogeneration technology or by other than a conventional power source for the generation of electricity.

C. The tax imposed by this section shall be collected from the service user by the person supplying such energy. The amount of tax collected in a month shall be remitted to the director and shall be due on or before the 20th day of the following month. If remitted by mail, such remittance shall be postmarked on or before the 20th day of the following month; provided, however, that if the 20th day falls on a weekend or legal holiday, and the remittance is made by mail, the remittance shall be postmarked as of the 1st business day following such weekend or legal holiday.

#### **§ 4.50.030 Fuel Users Tax.**

A. There is hereby imposed a tax upon every person in the city using fuel that is delivered through mains or pipes or by mobile transport. The tax imposed by this section shall be at the rate of 11% of the charges made for such fuel and shall be paid by the person paying for such fuel. “Charges” as used in this section, shall include charges made for metered fuel or mobile transport, fuel transportation charges and charges for service, including customer charges, service charges, minimum charges, demand charges, and annual and monthly charges and any other charge authorized by the California Public Utilities Commission or the Federal Energy Regulatory Commission.

B. There shall be excluded from the basis on which the tax imposed in this section is computed charges made for fuel that is to be resold and delivered through mains or pipes; charges made for gas sold for use in the generation of electrical energy or for the production or distribution of water by a public utility or government agency; and charges made by a gas public utility for gas used and consumed in the conduct of the business of gas public utilities.

C. The tax imposed in this section shall be collected from the service user by the person selling the fuel. The amount collected in a month shall be remitted to the director and shall be due on or before the 20th day of the following month. If remitted by mail, such remittance shall be postmarked on or before the twentieth day of the following month; provided, however, that if the 20th day falls on a weekend or legal holiday, and the remittance is made by mail, the remittance shall be postmarked as of the 1st business day following such weekend or legal holiday.

#### **§ 4.50.035 Delinquency.**

A. Taxes collected from a service user that are not remitted to the director on or before the due dates provided in this chapter are delinquent and are subject to penalties and interest.

B. Penalties for delinquency in remittance of any tax collected or any deficiency determination, shall attach and be paid by the persons required to collect and remit at the rate of 15% of the total tax collected or imposed herein.

C. Every penalty imposed under the provisions of this section shall become a part of the tax required to be remitted.

D. When fraud or gross negligence in reporting and remitting tax collections is discovered, the director shall have power to impose additional penalties of 20% of taxes owed upon persons required to collect and remit taxes under the provisions of this section.

E. Any person required to remit to the director or delinquent taxes as required in this section, shall pay interest at the prime lending rate per month or portion thereof, on the amount of tax owed exclusive of penalties, from the date on which the tax first became delinquent until paid.

F. No penalty or interest shall be applied if delinquencies are the result of natural disasters or other phenomena beyond the control of the person charged with collecting and remitting the tax, provided the person obliged to remit tax notifies the director as soon as normal communications permit.

#### **§ 4.50.040 Collection.**

Any tax required to be paid by a service user under the provisions of this chapter shall be deemed a debt owed by the service user to the city. Any such tax collected from a service user that has not been remitted to the director shall be deemed a debt owed to the city by the person required to collect and remit. Any person owing money to the city under the provisions of this chapter shall be liable to an action brought in the name of the city for the recovery of such amount.

#### **§ 4.50.045 Collection Procedures.**

The duty to collect and remit the taxes imposed by this chapter shall be performed as follows:

A. The tax shall be collected insofar as practicable at the same time as and along with the charges made in accordance with the regular billing practice. If the amount paid by a service user is less than the full amount of the charge and tax that has accrued for the billing period, a proportionate share of both the charge and the tax shall be deemed to have been paid.

B. The duty to collect tax from a service user shall commence with the beginning of the 1st regular billing period applicable to that person that starts on or after the operative date of this chapter. Where a person receives multiple billings, one or more being for different periods than another, the duty to collect shall arise separately for each billing period.

#### **§ 4.50.050 Additional Powers of Director.**

A. The director may make an assessment for taxes not paid or remitted by a person required to pay or remit. The director shall prepare a notice of the assessment, which shall refer briefly to the amount of the taxes and penalties imposed and the time and place when such an assessment shall be submitted to the city council for confirmation or modification. The director shall mail a copy of such notice to the person selling the service and to the service user at least 10 days prior to the date of the hearing and shall post such notice for at least 5 days continuous prior to the date of the hearing. Any interested party having any objections may appear and be heard at the hearing provided an objection is filed in writing with the director prior to the time set for the hearing. At the time fixed for considering the assessment, the city council shall hear the

same together with any objection filed and thereupon may confirm or modify the assessment by motion.

B. Whenever the director determines that a service user has deliberately withheld the amount of the tax owed from the amounts remitted to a person required to collect the tax, or that a service user has failed to pay the amount of the tax to such person for a period of 2 or more billing periods, or whenever the director deems it in the best interest of the city, the director may relieve such person of the obligation to collect taxes due under this chapter from certain named service users for specified billing periods. The director shall notify the service user that the director has assumed responsibility to collect the taxes due for the stated periods and demand payment of such taxes. The notice shall be served on the service user by personal delivery or by deposit of the notice in the United States mail, postage prepaid thereon, addressed to the service user at the address to which billing was made by the person required to collect the tax; or, should the service user have changed address, to the last known address. If a service user fails to remit the tax to the director within 15 days from the date of the service of the notice, which shall be the date of mailing if service is not accomplished in person, a penalty of 25% of the amount of the tax set forth in the notice shall be imposed, but not less than \$5. The penalty shall become part of the tax herein required to be paid.

#### **§ 4.50.055 Records Maintenance.**

It shall be the duty of every person required to collect and remit to the city any tax imposed by this chapter to keep and preserve, for a period of 3 years, all records as may be necessary to determine the amount of such tax, which records the director shall have the right to inspect at all reasonable times.

#### **§ 4.50.060 Refunds.**

A. Whenever the amount of any tax has been overpaid or paid more than once or has been erroneously or illegally collected or received by the director under this chapter it may be refunded as provided in this section.

B. A person required to collect and remit taxes imposed under this chapter may claim a refund or take a credit against taxes collected and remitted, the amount overpaid, paid more than once or erroneously or illegally collected or received when it is established in a manner prescribed by the director that the service user from whom the tax has been collected did not owe the tax; provided, however, that neither a refund nor a credit shall be allowed unless the amount of the tax so collected has either been refunded to the service user or credited to charges subsequently payable by the service user to the person required to collect and remit.

C. No refund shall be paid under the provisions of this section unless the claimant establishes a right thereto by written records showing entitlement thereto.

D. Whenever a service supplier, pursuant to an order of the California Public Utilities Commission or a court of competent jurisdiction, makes refund to service users of charges for past utility services, the taxes paid pursuant to this chapter on the amount of such refunded charges shall also be refunded to service users, and the service supplier shall be entitled to claim a credit for such refunded taxes against the amount of tax which is due upon the next monthly returns. In the event this chapter is repealed, the amount of any refundable taxes will be borne by the city.

#### **§ 4.50.065 Effective Date.**

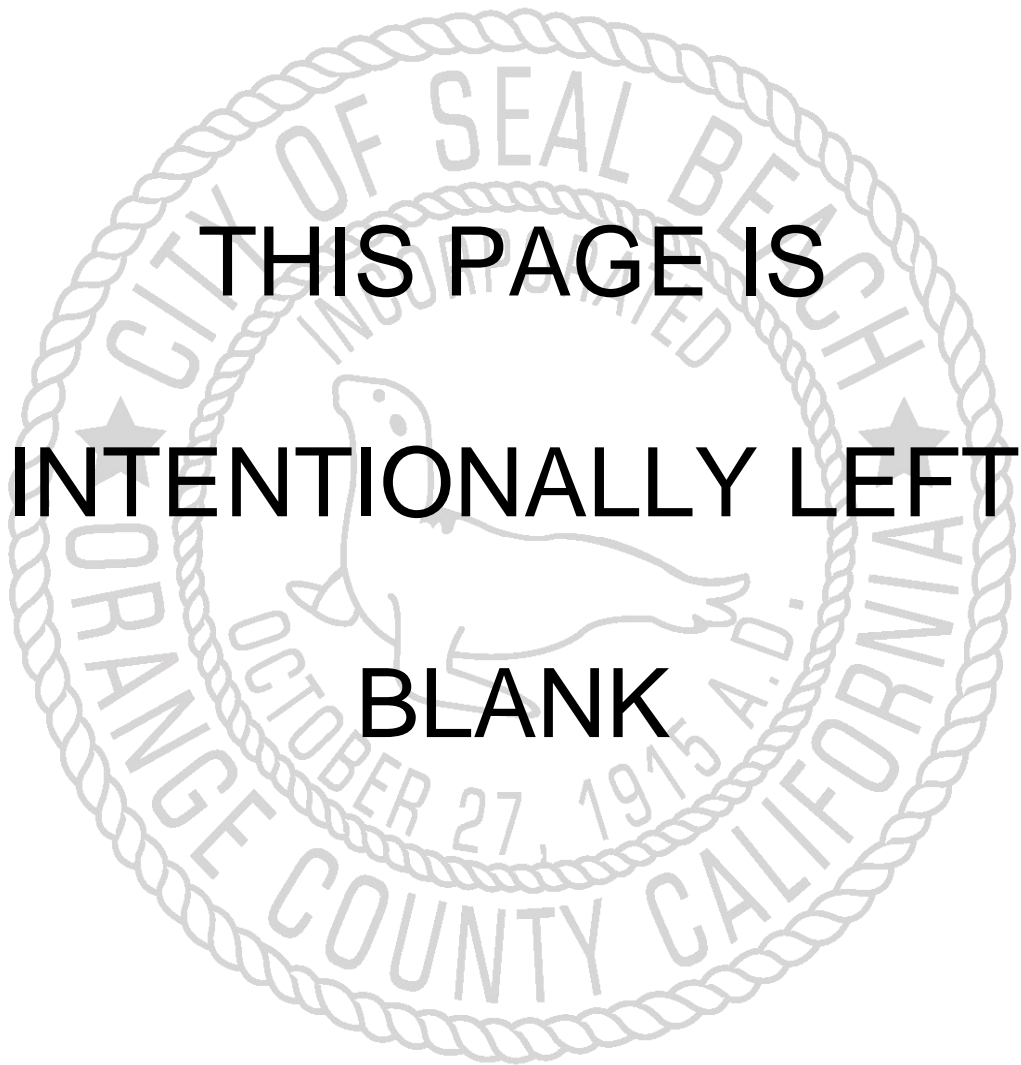
The effective date of the ordinance codified in this chapter is March 26, 1973.



**§ 4.50.070      Annual Review.**

The rates set forth in this chapter shall be reviewed by the City Council on an annual basis at a regularly scheduled meeting in conjunction with the adoption of the budget. (Ord. No. 1610)

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